FILE COPY

FILED
FEB 14 1934
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 498

THE FEDERAL LAND BANK OF BERKELEY, A CORPORATION, PETITIONER,

vs.

SAMUEL S. WARNER ET UX. ET AL., RESPONDENTS.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ AND BRIEF.

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for
The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Columbia, Columbia, S. C.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Spokane, Spokane, Wash.

INDEX.

Subject Index.

	Page
Motion for leave to file brief as amicus curiæ	1
Brief of Irving P. Whitehead, as amicus curiæ	3
I. Preliminary statement	3
II. Statement of the case	3
III. Specification of error	5
IV. Question presented	8
V. Summary of argument	8
VI. Under the provisions of the Federal Farm Loan Act, a federal land bank is authorized to collect its reasonable costs and attorney's fees, in the event of foreclosure	8
VII. The prohibitions contained in the Federal Farm Loan Act against the collection of "any fee, commission, bonus, gift, or other consideration" were not intended and do not in fact apply to the collection of court costs and attorney's fees	10
VIII. Inclusion of a stipulation in a note or mortgage taken by a federal land bank for the payment of reasonable costs and attorney's fees, in the event of foreclosure, does not violate the provisions of the act prescribing the maximum interest rates which may be charged to borrowers	14
IX. The practical construction placed upon the act by petitioner has been approved by the governmental body charged with its execution, and has been followed by the banks themselves for a period of more than seventeen years	19
X. If the law is so construed as to deny the Federal Land Bank of Berkeley the right to recover its reasonable costs and attorney's fees incurred in connection with the foreclosure proceedings involved in this case, it will have the effect of placing an undue burden upon, and causing a loss to, the other borrowers from the same institution who have met their respective obligations when and as they become due	21
	23

Cases Cited.

American Mtg. Co. v. Downing, 17 F. 660	20
Barrett v. Van Pelt, 268 U. S. 85, 45 S. Ct. 437	15
Best v. British and American Mtg. Co., 79 F. 401	20
Bloxham, Comp. etc., v. The Consumers' Elec. Light and Street R. R.	20
Butterfield v. Stranahan, 192 U. S. 470	10

Page

Cornell v. Coyne, 192 U. S. 418, 430 10
Crooks v. Harrelson, 35 F. (2d) 416, and affirmed 282 U. S. 55, 51 S. Ct. 49 10
Feitler v. U. S., 34 F. (2d) 30, Affirmed 281 U. S. 389 15
Fleischmann Constr. Co. v. U. S., 270 U. S. 349, 46 S. Ct. 284 15
Fowler v. Equitable Trust Co., 141 U. S. 411 ..... 9, 20
Hellmich v. Hellman, 276 U. S. 233 10
Illinois Surety Company v. U. S., 215 Fed. 334 22
Petition of Public National Bank of New York, 49 Sup. Ct. 43, 278 U. S. 101 10
Rector of Holy Trinity Church v. U. S., 143 U. S. 457, 12 S. Ct. 511; p. 513 ..... 10, 18
Southern Surety Co. v. U. S., 23 F. (2d) 55 (Cert. den. 278 U. S. 604, 49 S. Ct. 11 15
Spain v. Hamilton's Administrator, 68 U. S. 604, 626 20
State Board v. Holliday, 150 Ind. 216, 49 N. E. 14, 42 L. R. A. 826 21
Strathearn S. S. Co. v. Dillon, 252 U. S. 348, 354 10
U. S. v. Baltimore Post Co., 268 U. S. 388, 45 S. Ct. 560 10
U. S. v. Mo. Pac. R. Co., 278 U. S. 269 ..... 10, 18
U. S. v. Union Pacific R. R. Co., 91 U. S. 72 10
Union Mtg. Banking and Trust Co. v. Hagood, 97 F. 360 20
Co., 36 Fla. 519, 540, 51 Am. St. Reports 44, 29 L. R. A. 507 21
United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 53 S. Ct. 42, 44 22
Wilson Sewing Mach. Co. v. Moreno, 7 F. 806 20

STATUTES AND OTHER AUTHORITIES.

Federal Farm Loan Act (12 U. S. C., Chap. 7) 3
Section 1 (12 U. S. C. Sec. 641) 11
4 (12 U. S. C. Sec. 676) 11
12 (12 U. S. C. § 771) 9
13 (12 U. S. C. Sec. 781) 12
30 (12 U. S. C. Sec. 971) 12
Report No. 144, 1st Sess. 64th Cong. 13, 17

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 498

THE FEDERAL LAND BANK OF BERKELEY, A CORPORATION, PETITIONER,

vs.

SAMUEL S. WARNER ET UX. ET AL., RESPONDENTS.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the eleven Federal land banks named below, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiæ*.

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for
The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Columbia, Columbia, S. C.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Spokane, Spokane, Wash.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 498

THE FEDERAL LAND BANK OF BERKELEY, A CORPORATION, PETITIONER,

vs.

SAMUEL S. WARNER ET UX. ET AL., RESPONDENTS.

BRIEF OF IRVING P. WHITEHEAD, AS AMICUS CURIÆ.

I. Preliminary Statement.

Leave to file this brief as *amicus curiæ* has been requested by the undersigned for and on behalf of the eleven Federal land banks named in the accompanying motion.

Each of the Federal land banks, on whose behalf this brief is filed, are bodies corporate organized, chartered and existing under and by virtue of an Act of Congress, approved July 17, 1916, and Acts amendatory thereof, all of which are known and cited as the Federal Farm Loan Act (12 U. S. C., Chap. 7). Each bank is authorized and empowered to engage in the business of lending money to farmers on the security of qualified first mortgages on

farm lands situated within the Federal land bank district within which it is organized, or for which it is acting, and in the business of selling standard forms of securities based upon such qualified first mortgages. The banks on whose behalf this brief is filed, together with the Federal Land Bank of Berkeley, constitute a cooperative system of land banks, which conduct and carry on their operations subject to the same conditions and limitations as are set forth in their respective charters, and as prescribed by the Federal Farm Loan Act.

The question involved in the case now before this Court is one regarding the proper construction and practical application of certain provisions of the Act. These provisions have never been construed or passed upon by this Court.

The statutory provisions in question, and the principles of law which are involved in the assignment of error, are applicable to similar contracts, similar relationships, and to the practice followed by all of the banks of the system with respect to similar transactions throughout the entire United States, and the provisions in question have received a uniform interpretation by the banks and by the governmental body charged with the duty of supervising their activities and the execution of these and other provisions of the statute under which they operate.

The decision of this Court, with respect to the question presented to it in this case, is of fundamental importance to the whole Federal land bank system.

In the discussion of this and other important questions in this brief, it will be impossible to avoid a duplication, to some extent, of the arguments contained in the petitioner's brief. With those arguments this *amicus* is in complete accord, and the omission of some of them herein is by no means to be construed as a refutation of their co-

gency or correctness. This *amicus* believes, however, that it will be helpful to call the Court's attention to certain provisions of the Act, and to certain principles of law, which were not discussed in detail in the brief filed on behalf of the petitioner.

II. Statement of the Case.

This *amicus* concurs in the statements regarding the jurisdiction of this Court and the proceedings below, as set forth in the brief filed on behalf of the Federal Land Bank of Berkeley. It is therefore prayed that the contents of petitioner's brief, with respect to these matters, be read as if stated by this *amicus* on behalf of the eleven banks for which he speaks.

As previously stated, the petitioner is one of the twelve Federal land banks chartered under the provisions of the Federal Farm Loan Act, and is authorized to operate and conduct its business in the eleventh Federal land bank district, comprising the States of Arizona, California, Nevada and Utah.

A number of years after the bank was organized, Samuel S. Warner filed his application for membership in the Salt River Valley National Farm Loan Association, and was duly elected a member thereof. At the same time, he filed a written application for a loan from the Federal Land Bank of Berkeley in strict conformity with the provisions of the Act. Later his application was approved, and on November 1, 1922, the respondent and Lydia S. Warner, his wife, executed and delivered to the bank their promissory note in the principal sum of $7,200, together with a first mortgage covering certain farm lands situate in Maricopa County, Arizona, securing the payment of said note. This mortgage was made and executed pursuant to, and in accordance with, the provisions of the Federal Farm Loan

Act and was in form and term approved by the Federal Farm Loan Board.* Among others, this mortgage contained the following provision:

> "This mortgage and the note secured thereby are executed and delivered under and in accordance with the said Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein."

The record in the Court below (R. 29) shows that pursuant to, and in accordance with, these "terms, conditions and provisions," the Federal Farm Loan Board had approved the inclusion of a further agreement in said mortgage under which the Respondent Warner was required to pay, and the Federal Land Bank of Berkeley was authorized to collect all costs, legal expenses, and reasonable attorney's fees, incident to the institution of any proceedings to foreclose the mortgage. This provision read as follows:

> "(10) That in case of institution of suit to foreclose this mortgage, the mortgagors shall pay, as a part of

---

*"The Farm Loan Board consisted of the Secretary of the Treasury and six members, to be appointed by the President, Section 3; 12 U. S. C., Section 652. After the entry of the final judgment in this cause, the Federal Farm Loan Board was abolished and its functions were transferred to the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration, by Executive Order of the President, No. 6084 of March 27, 1933; the name of the officer of the Farm Loan Commissioner was afterward changed to that of Land Bank Commissioner, by Act of June 16, 1933, Session Laws, First Session 1933, 273." (*Federal Land Bank of Columbia* v. *Gaines*, 54 S. Ct. 168.)

> the debt hereby secured, all costs and legal expenses and reasonable attorney's fee to be fixed by the Court, and that said attorney's fee is and shall be a lien upon said premises and secured by this mortgage. * * *"

Subsequently, the respondent defaulted in the payment of his obligation, and the bank, as it had a right to do under the provisions of the Federal Farm Loan Act and under the covenants of the mortgage in question, declared the whole debt to be in default and demanded payment thereof from the respondent and his wife, and from the Salt River Valley National Farm Loan Association as indorser of the mortgage. Payment not being made, the bank instituted its suit in the Superior Court of Maricopa County to foreclose the mortgage and collect its debt.

The respondents filed their answer to this suit and set up a number of defenses to the relief prayed for by the bank. Among other things, the respondents denied the right of the bank to recover a reasonable fee to be paid its attorney for his services in connection with the conduct of the foreclosure proceedings. The respondent claimed also to be entitled to a credit of $360 on account of the par value of the stock which he owned in the Salt River Valley National Farm Loan Association.

The Superior Court of Maricopa County allowed the offset of $360 and denied the bank's right to recover an attorney's fee as prayed for in its complaint (R. 13).

Thereupon the Federal Land Bank of Berkeley perfected its appeal in the Supreme Court of Arizona from the judgment rendered by the Superior Court of Maricopa County. After hearing the appeal, the Supreme Court of Arizona, the Court of last resort in that State, in an opinion filed by its chief justice on July 1, 1933, reversed the opinion of the lower court with respect to the allowance of offset to the respondents in the amount of $360, but affirmed the de-

cision of the same Court in denying the bank the right to recover a reasonable attorney's fee (R. 21).

The opinion of the Supreme Court of Arizona is reported in 23 Pac. (2d) 563.

III. Specification of Error.

The assignment of error in this case is directed to the refusal of the Court below to permit the Federal Land Bank of Berkeley to recover a reasonable fee to be paid to its attorney for the institution and conduct of a suit in equity brought to foreclose the mortgage executed by the respondents.

IV. Question Presented.

The question presented is whether the provisions of the Federal Farm Loan Act expressly or impliedly make it unlawful for a Federal land bank to recover a reasonable fee to be paid to its attorney, in the event of foreclosure of one of its mortgages, if such fees are authorized and may be collected under the decisions and practice of the state where the mortgage contract is enforceable.

V. Summary of Argument.

The mere right to collect attorney's fees in foreclosure cases which are not being instituted by the banks at the present time, except in unusual circumstances, is not the only limitation on the powers of the bank that is involved. If the reasoning of that Court is carried to its logical conclusion, a Federal land bank would be prohibited from recovering its costs and expenses incurred in connection with the prosecution and defense of proceedings and suits of all kinds. However, when the various provisions of the Federal Farm Loan Act are considered in connection with the purposes which were sought to be accomplished by its en-

enactment, and in the light of the well established principles of law applicable to their interpretation, it will be found:

(1) That the Federal land banks are authorized just as natural persons to collect their necessary and reasonable costs and expenses, including proper attorney's fees, as an incident to the remedy of foreclosure.

(2) That the prohibitions contained in the Federal Farm Loan Act against the collection of any fee, commission, bonus, gift, or other consideration (12 U. S. C. §§791 and 983) were not intended to and do not in fact apply to the collection of Court costs and attorney's fees;

(3) That the inclusion of a stipulation in a note or mortgage taken by a Federal land bank for the payment of reasonable costs and attorney's fees, in the event of foreclosure, does not violate the prohibitions contained in section 12 of the Federal Farm Loan Act (12 U. S. C. § 771), which provides that: "No loan on mortgage shall be made under this Act at a rate of interest exceeding 6 per centum per annum, exclusive of amortization payments." (*Fowler* v. *Equitable Trust Co.*, 141 U. S. 411.)

(4) That the Federal Farm Loan Act has been construed by the governmental body charged with its execution as permitting the banks to recover costs and reasonable expenses and attorney's fees, in the event of foreclosure, and the banks themselves have put this construction into practical operation for a period of more than seventeen years;

(5) That if the law is so construed as to deny the Federal Land Bank of Berkeley the right to recover its reasonable costs and attorney's fees incurred in connection with the foreclosure proceedings involved in this case, it will have the effect of placing an undue burden upon, and causing a loss to, the other borrowers from the same institu-

tion who have met their respective obligations when and as they became due.

These propositions will be taken up and discussed in the order in which they have been stated.

VI.

Under the Provisions of the Federal Farm Loan Act, a Federal Land Bank is Authorized to Collect Its Reasonable Costs and Attorney's Fees, in the Event of Foreclosure.

A cardinal rule of statutory construction, which has been affirmed repeatedly by this Court,* is that effect must be given, if possible, to the whole statute and every part thereof, provided, of course, the construction is reasonable and not in conflict with the legislative intent.** Under a rule of statutory construction equally well established, the title of an act may be resorted to in doubtful cases as an aid in determining the legislative intent.** Under similar circumstances the Courts have held repeatedly that the reports of committees of the Congress may be taken into consideration to aid in the ascertainment of legislative intent.***

---

* Petition of Public National Bank of New York, 49 Sup. Ct. 43, 278 U. S. 101; *Crooks* v. *Harrelson*, 35 F. (2d) 416, and affirmed 282 U. S. 55, 51 S. Ct. 49; *Hellmich* v. *Hellman*, 276 U. S. 233; *U. S.* v. *Baltimore Post Co.*, 268 U. S. 388, 45 S. Ct. 560.

** *Cornell* v. *Coyne*, 192 U. S. 418, 430; *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348, 354.

*** *U. S.* v. *Union Pacific R. R. Co.*, 91 U. S. 72; *Butterfield* v. *Stranahan*, 192 U. S. 470; *U. S.* v. *Mo. Pac. R. Co.*, 278 U. S. 269; *Rector of Holy Trinity Church* v. *U. S.*, 143 U. S. 457.

It is respectfully submitted that with these well established principles of statutory construction in mind, a mere reading of the pertinent provisions of the Federal Farm Loan Act, and of the statements to be found in the reports of the committees of the Congess at the time of its enactment, will demonstrate conclusively the correctness of the conclusions stated in the caption.

Upon reference to the title of the Act itself it will be found that it was the purpose of the legislation, among other things, to create standard forms of investment based on farm mortgages, and "to *equalize rates of interest* upon farm loans." (Italics added.) (App. to Petitioner's Br., p. 45.)

Under the provisions of section 1 of the Act (12 U. S. C. Sec. 641), its administration was placed under the direction and control of the Federal Farm Loan Board, which body was, by the provisions of section 3 (12 U. S. C. Sec. 651), *charged with the execution of the Act.* The first reference to the farm mortgages mentioned in the title of the Act is found in section 2 thereof:

> "Wherever the term 'first mortgage' is used in this Act it shall be held to include such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board, and the credit instruments secured thereby." (12 U. S. C. Sec. 642.) (Petitioner's Br. p. 45.)

The general corporate powers of the Federal land banks, which were created for the purpose of making first mortgage loans and selling standard forms of security based on such mortgages, are set forth in section 4 of the Act (12 U. S. C. Sec. 676). Among other things, the banks are authorized "To sue and be sued, complain, interplead, and defend, in any court of law or equity, *as fully as natural persons.*" (Italics added.) In the same section each bank

is authorized "To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business herein described," the business of making farm mortgage loans.

Certain specific powers given every Federal land bank are set forth in section 13 of the Act (12 U. S. C. Sec. 781). Among these powers is the following:

> "To invest such funds as may be in its possession in the purchase of *qualified first mortgages* on farm lands situated within the Federal land bank district within which it is organized or for which it is acting." (Italics added.)

The qualified first mortgages mentioned in this section must of necessity have reference to "such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board."

In order to insure the safety of loans secured by these mortgages section 30 of the Act (12 U. S. C. Sec. 971) provides:

> "It shall be the duty of the Land Bank Commissioner to make examination of the laws of every State of the United States and to inform the Federal Farm Loan Board as rapidly as may be whether in his judgment the laws of each State relating to the conveying and recording of land titles, and the foreclosure of mortgages or other instruments securing loans, as well as providing homestead and other exemptions and granting the power to waive such exemptions as respects first mortgages, are such as to assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages."

The next paragraph of the same section provides that pending the making of such an examination in the case of any State that the Federal Farm Loan Board might declare

first mortgages on farm lands situated within such State ineligible as the basis for an issue of farm loan bonds.

With respect to these provisions of the Act the Committee on Banking and Currency of the Senate made the following statement in its report submitting the original bill to that body for consideration:

> "It is well understood that the laws in the several States vary as to land titles, registry, exemptions, homestead rights, *foreclosure*, and equities of redemption. It is therefore made the duty of the farm loan board to investigate these questions in each State and to declare mortgages ineligible as security for farm-loan bonds in those States where the laws do not give *adequate protection* to those loaning on first mortgage." (Italics added.)
>
> (Rpt. No. 144, 1st Sess. 64th Cong.) See Petitioner's Br. p. 42.)

This statement of the Committee recognizes the fact that the laws of the several States might vary as to land titles and *the foreclosure of mortgages*. It recognizes also that there would be no conflict between the provisions of the Farm Loan Act and the provisions of State laws designed to give "adequate protection to those loaning on first mortgage."

We have seen from the facts of the case at bar that the Federal Land Bank of Berkeley and the Federal Farm Loan Board have endeavored to carry out these plain and unambiguous provisions of the statute under which they were operating. They show first that the bank invested its funds in a qualified first mortgage; that the mortgage had been approved by the Federal Farm Loan Board; that it contained a provision for the payment of costs and attorney's fees in case of foreclosure, and, that after the borrower had defaulted in the payment of his loan and in order to protect itself against loss, the bank undertook to

enforce this covenant of its contract as a part of its remedy of foreclosure.

The same facts show with equal clarity that the bank has conducted its operations in accordance with the well settled law of the State of Arizona. In this connection the Supreme Court of Arizona said in its opinion "*We have frequently recognized and enforced contracts to pay attorneys' fees in foreclosure proceedings.* * * * The stipulation in the mortgage to pay an attorney's fee when it was put in there was legal, and is still legal, under the decisions and laws of this state." (R. 25.) (Italics added.)

Since the banks are authorized to sue and be sued as natural persons, and to make contracts providing for adequate safeguards and remedies in case of default on the part of their borrowers, the petitioner in this case was entitled and authorized to enforce this contract "to pay attorneys' fees" in the courts of Arizona, as an incident to the relief afforded and available to others engaged in the business of lending money on the security of farm mortgages, unless other provisions of the Act specifically deny the banks such right. In subsequent pages of this brief this *amicus* will endeavor to show that the banks are not denied this right.

VII.

The Prohibitions Contained in the Federal Farm Loan Act Against the Collection of "any Fee, Commission, Bonus, Gift, or Other Consideration" Were not Intended and do not in Fact Apply to the Collection of Court Costs and Attorney's Fees.

No one has contended that the sum of $125, which was prayed for by petitioner in its amended complaint, is not a reasonable fee for the services performed by its attorney. Nevertheless the Supreme Court of Arizona refused to allow the same on the theory that:

"Section 983 [of Title 12, U. S. Code] contains this restriction:

No land bank * * * shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized.'

"The identical thing forbidden, to wit, a fee, was contracted for in the mortgage and is now being demanded of the borrower. Such a fee is not 'specifically authorized' but is inferentially forbidden by the act." (R. 28.)

This *amicus* respectfully submits that it has just been demonstrated that when certain provisions of the Act are considered together, and in the light of the purposes for which they were enacted, the banks are authorized to recover costs and attorney's fees in connection with the institution and maintenance of foreclosure proceedings. It can be demonstrated with equal clarity that their collection is not "inferentially forbidden by the act."

Here again, before taking up the language of the sections in question, it will be well to consider several other well established rules for the construction of statutes, which have become almost axiomatic.* The courts have held repeatedly that when the language of a statute fairly permits a construction which will lead to an unreasonable result, such construction should be avoided. Furthermore, a rule which is followed universally by the courts in the exposition of statutes is that the intent of the law, if such intent can be clearly ascertained, shall prevail over the letter and this is especially true where the precise words, if construed in their ordinary sense, would lead to manifest injustice.**

---

* *Feitler* v. *U. S.*, 34 F. (2d) 30, Affirmed 281 U. S. 389; *Southern Surety Co.* v. *U. S.*, 23 F. (2d) 55 (Cert. den. 278 U. S. 604, 49 S. Ct. 11).

** *Fleischmann Constr. Co.* v. *U. S.*, 270 U. S. 349, 46 S. Ct. 284; *Barrett* v. *Van Pelt*, 268 U. S. 85, 45 S. Ct. 437.

When the provisions of 12 U. S. C., sections 781, 791 and 983 are read with these principles in mind, it will be seen that the fees and charges therein referred to were not intended to embrace attorney's fees. In fact, from a careful reading of the provisions in question it is apparent that the fees and charges therein referred to are those "included in the preliminary cost of negotiating mortgage loans", and that they have to do only with the transactions incident to negotiating and carrying the loans. In other words, the charges which are so carefully safeguarded by the provisions of section 781 are not in any way connected with the proper damages and costs which may be recovered by the bank, in order to indemnify it on account of expense and cost incident to enforcing its remedy after the borrower has failed to perform his contract. For example, the ninth paragraph of section 781, which sets forth some of the powers of the Federal land banks, defines the charges that may be made against "applicants for loans and borrowers" as "reasonable fees not exceeding the actual cost of appraisal and determination of title." Under the same section legal fees and recording charges imposed by the law in a State where the land to be mortgaged is located may also be included. The next sentence of the section confirms this interpretation. "The borrower may pay such fees and charges or he may arrange with the Federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments." It is obvious that the charges referred to are "preliminary costs" or they could not "be made a part of the face of the loan."

For the same reason it is equally clear that the prohibition contained in section 983 to the effect that no land bank "shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized" has refer-

ence only to fees or charges for services rendered by the bank to the borrower in connection with matters pertaining to the making and carrying of the loan. An attorney's fee does not come within this category. As we have seen previously, the right to collect attorney's fees in case of foreclosure is a mere incident to the remedy.

This construction is confirmed upon reference to the report from the Committee on Banking and Currency of the Senate previously alluded to.* It will be seen from this report that among the "primary considerations" were the following: "Absolute safety and attractive income to the investor; low interest rates, long-term mortgages, and amortization payments for the farmer; and adaptability to every part of the country." (Petitioner's Br., p. 30.) It will be noted that the first of these primary considerations was absolute safety and the second reasonable rates of interest to the farmer. With respect to the latter the Committee said:

> "In many parts of the country the farmer is charged extortionate and inexcusable rates of interest, regardless of usury laws and a decent regard for human necessities. He has a real grievance here. (Petitioner's Br.., p. 27.)

A further statement by the Committee throws considerable light upon the prohibition against collecting commissions, fees, bonuses and other charges from the borrower. "Present interest rates to farmers are so confused with commissions, fees, and charges of various sorts that it is difficult to ascertain the total cost of money on farm mortgages." Following this statement the Committee included a table under the caption "Farm mortgage loans—average rates for in-

---

* Report No. 144, 1st Sess. 64th Cong., App. Petitioner's Br., p. 26.

terest and commission". Immediately after the insertion of this table the Committee makes the following observation:

> "As the foregoing table gives the average rate, there must be individual cases running much higher. Testimony before the joint subcommittees of the Senate and House Committees on Banking and Currency in 1914 gave the maximum rate as high as 25 per cent, including commissions and charges."

As this Court said in the case of *U. S.* v. *Mo. Pac. R. Co.*, 278 U. S. 269, these statements by the Committee "may be taken into consideration to aid in the ascertainment of the true legislative intent."

In this same connection the Court said in the case of the *Rector of Holy Trinity Church* v. *U. S.*, 143 U. S. 457, 12 S. Ct. 511, p. 513:

> "Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the Court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body."

The statements of the Committee show that the evils which Congress sought to remedy were usurious interest rates and unconscionable commissions and bonuses, exacted in connection with the making and carrying of mortgage loans. We have seen also that the first of the primary considerations in the creation of the farm loan system was absolute safety. If we construe the words "fees and charges" in the Act to prohibit recovery of costs and attorney's fees in foreclosure proceedings, absolute safety to the investor in farm mortgages would be impaired. Furthermore, the Act would not be adaptable to every part of the country, if the banks could not avail themselves of the safeguards against loss provided for "natural persons" engaged in similar enterprises.

This brings us to a consideration of the question whether the stipulation in a mortgage taken by a Federal land bank for the payment of attorney's fees is a violation of the provisions of the Farm Loan Act with respect to the maximum amount of interest which may be charged the borrower.

VIII.

Inclusion of a Stipulation in a Note or Mortgage Taken by a Federal Land Bank for the Payment of Reasonable Costs and Attorney's Fees, in the Event of Foreclosure, Does not Violate the Provisions of the Act Prescribing the Maximum Interest Rates Which May be Charged to Borrowers.

The provisions of the Act with respect to the maximum rate of interest which may be charged borrowers by the Federal land banks are as follows:

> "Second. *Agreement for Repayment on Amortization Plan.*—Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover, first, a charge on the loan at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding, except with the approval of the Governor of the Farm Credit Administration, 1 per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years: * * *
>
> "Third. *Maximum Interest Rate.*—No loan on mortgage shall be made under this Act at a rate of interest

exceeding 6 per centum per annum, exclusive of amortization payments.

* * * * * * *

"Ninth. *Interest on Defaulted Payments; Payment of Taxes and Liens; Insurance.*—Every borrower shall pay simple interest on defaulted payments at the rate of 8 per centum per annum."

This Court has held that a fee allowed an attorney in a foreclosure action is not a charge to be considered like a bonus or commission in ascertaining whether the mortgagor is subject to usury. The same principle has been announced repeatedly by the Federal and State courts.** We see, therefore, that the collection of attorney's fees cannot be held to be illegal on the ground that it violates the provisions of the Act fixing the maximum interest rate which may be charged to borrowers. In fact, when all of the "restrictions" referred to by the Supreme Court of Arizona are reviewed in the light of the purpose which was sought to be accomplished by their insertion the reader is forced to the conclusion that the collection of costs and attorney's fees are not "inferentially forbidden by the Act."

**Fowler* v. *Equitable Trust Co.*, 141 U. S. 411. "The payment of anything additional depends also upon a contingency, and not upon any happening of a certain event, which of itself would be deemed insufficient to make a loan usurious." *Spain* v. *Hamilton's Administrator*, 68 U. S. 604, 626.

** *Wilson Sewing Mach. Co.* v. *Moreno*, 7 F. 806; *American Mtg. Co.* v. *Downing*, 17 F. 660; *Best* v. *British and American Mtg. Co.*, 79 F. 401; *Union Mtg. Banking and Trust Co.* v. *Hagood*, 97 F. 360.

IX.

The Practical Construction Placed Upon the Act by Petitioner Has Been Approved by the Governmental Body Charged With Its Execution, and Has Been Followed by the Banks Themselves for a Period of More Than Seventeen Years.

As previously stated, the supervisory body charged with the execution of the Act has construed its provisions as permitting the Federal land banks to recover costs and reasonable attorney's fees in the event of foreclosure. The banks themselves have put this construction into practical operation for a period of more than seventeen years. Is this interpretation of the Act entitled to consideration? The Supreme Court of Florida answered this question in the case of *Bloxham, Comp. etc., v. The Consumers' Elec. Light and Street R. R. Co.*, 36 Fla. 519, 540, 51 Am. St. Reports 44, 29 L. R. A. 507, as follows:

> "Besides the judicial construction of statutes, there is known to the law another kind of construction. This kind of construction has especial application to statutes made for the regulation of the different departments of the Government, and is the interpretation put upon them by the actual administration of them by such departments. As distinguished from judicial construction, it is called *the practical construction of statutes.*" (Italics added.)

In the case of *State Board v. Holliday*, 150 Ind. 216, 49 N. E. 14, 42 L. R. A. 826, the court held that the legislature is presumed to be cognizant of the construction placed upon a law by the administrative body charged with its execution and after long continuance, without any legislation evincing dissent, courts will consider themselves warranted

in adopting that construction. In this connection see also case of *Illinois Surety Company* v. *U. S.*, 215 Fed. 334.

This well established principle of statutory construction has been very clearly stated by this court in the case of *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 53 S. Ct. 42, 44:

> "Moreover, the practical and long-continued construction of the executive departments charged with the administration of the act and with the duty of making the rules and regulations therein provided for has been in accordance with the view we have expressed as to the meaning of the section under consideration. The rules and regulations, as amended on May 11, 1914, deal with the entire subject in detail under the recital, '(i) The following tolerances *and variations* [italics supplied] from the quantity of the contents marked on the package shall be allowed: * * *' Then follows an enumeration of discrepancies due to errors in weighing which occur in packing conducted in compliance with good commercial practice; due to differences in capacity of bottles and similar containers, resulting from unavoidable difficulties in manufacture, etc.; or in weight due to atmospheric differences in various places, etc. These regulations, which cover variations as well as tolerances and exemptions, have been in force for a period of more than eighteen years, with the silent acquiescence of Congress. If the meaning of the statutory words was doubtful, so as to call for a resort to extrinsic aid is an effort to reach a proper construction of them, we should hesitate to accept the committee reports in preference to this contemporaneous and long-continued practical construction of the act on the part of those charged with its administration. Such a construction, in cases of doubtful meaning, is accepted unless there are cogent and persuasive reasons for rejecting it. See, for example, *United States* v. *Johnston*, 124 U. S. 236, 253, 8 S. Ct. 446, 31 L. Ed. 389."

This brings us to a consideration of the injustice which would be done to other deserving borrowers of the Federal land banks who have paid their obligations promptly, if the narrow construction placed upon the law by the court below should be affirmed.

X.

If the Law Is so Construed as to Deny the Federal Land Bank of Berkeley the Right to Recover Its Reasonable Costs and Attorney's Fees Incurred in Connection With the Foreclosure Proceedings Involved in This Case, It Will Have the Effect of Placing an Undue Burden Upon, and Causing a Loss to, the Other Borrowers From the Same Institution Who Have Met Their Respective Obligations When and as They Become Due.

The reasons which prompt this assertion are apparent by referring again to the Report of the Committee on Banking and Currency of the Senate:

> "The land banks are permitted to charge borrowers 1 per cent more for interest than they pay bondholders. For example, if the current rate on farm-loan bonds is 4 per cent, the bank may charge not to exceed 5 per cent to farmers who borrow. This margin of 1 per cent on the amount of unpaid principal outstanding is available to the bank for its expenses and earnings, but it will probably be largely reduced in practice. The profits go to the local associations in the form of dividends on stock of the land bank held by the associations and reach the borrowers in the form of dividends on stock held by them in the associations. In this way the earnings of the system go to the borrowers, and its cooperative character is assured. If the 1 per cent margin is too high, no harm is done, for the excess comes back to the borrower in dividends. Section 13." (Petitioner's Br. p. 42.)

If, as stated by the court below, the banks are required to pay costs and attorney's fees in foreclosure cases out of their earnings, the borrowers who pay their obligations when due would be penalized and sustain a loss on account of the failure of defaulting borrowers to meet their obligations.

CONCLUSION.

In the light of the foregoing, this *amicus* submits that it has been demonstrated that the Federal land banks are authorized, under the provisions of the Federal Farm Loan Act, to collect costs and attorney's fees in the event of foreclosure; that the collection of these fees is not "inferentially forbidden by the Act"; that the supervisory body charged with its execution has so construed it; that if the law is construed otherwise it would cause injustice and hardship upon deserving borrowers; and that the decision of the court below should be reversed.

Respectfully submitted,

IRVING P. WHITEHEAD,
As amicus Curiæ, Counsel for

The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Columbia, Columbia, S. C.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Spokane, Spokane, Wash.

SUPREME COURT OF THE UNITED STATES.

No. 498.—October Term, 1933.

The Federal Land Bank of Berkeley, Petitioner, *vs.* Samuel S. Warner *et ux.* } On Writ of Certiorari to the Supreme Court of the State of Arizona.

[April 2, 1934.]

Mr. Justice Butler delivered the opinion of the Court.

Respondents gave petitioner a mortgage on their farm lands in Arizona to secure a loan of $7,200 made in accordance with the Farm Loan Act.[1] The mortgage provides that in case of suit to foreclose the mortgagors shall pay a reasonable attorney's fee to be fixed by the court. And that clause is valid under Arizona law.[2] The borrowers having failed to pay according to their promise, petitioner brought this suit to foreclose the mortgage and prayed that an attorney's fee of $125 be included in the judgment. Respondents objected to the allowance of any amount on account of that item, the trial court sustained their contention and the supreme court upheld that part of the decree upon the ground that the collection of such a fee is forbidden by the following part of § 31: "No land bank . . . shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized". 12 U. S. C., § 983.

That construction cannot be sustained. The Act establishes cooperation between borrowers on farm mortgages and investors in the bonds secured by them. The requirement, by means of the mortgage provision, that a mortgagor shall bear the expense put upon the bank by his default is reasonable and in harmony with that principle. In the absence of a plain expression to that effect,

[1] Federal Farm Loan Act of July 17, 1916, 39 Stat. 360, as amended. 12 U. S. C., § 636, *et seq.*

[2] This case, — Ariz. —. McClintock *v.* Bolton (1899) 6 Ariz. 370, 377. See Estate of Amirault (1921) 22 Ariz. 122. Maxey *v.* Somerton State Bank (1921) 22 Ariz. 371. O. S. Stapley Co. *v.* Rogers (1923) 25 Ariz. 308. § 3840, R. C., 1928.

it may not be held that Congress intended to put upon non-defaulting borrowers any part of the expense of foreclosure of mortgages made by others. The Act does not prescribe proceedings for foreclosure but indicates that state laws are to govern. Section 30, directs the land bank commissioner to examine the laws of each State and to report, among other things, whether in his opinion they are such as to safeguard against loss in case of default. Code, § 971. It provides that, if examination shall show that the laws of any do not afford sufficient protection, the Farm Credit Administration may declare mortgages on land in that State ineligible. Code, § 972. And the petition for this writ indicates that, except in a few States where local law prohibits such contracts, all the mortgages taken by the Federal land banks contain stipulations for attorney's fees for foreclosure.[1] From this it appears that officers charged by law with the administration of the banks have always construed the Act to permit state laws to control. Our attention has not been called to any case in which that construction has been questioned. It is entitled to great weight. *United States* v. *Mo. Pac. R. Co.*, 278 U. S. 269, 280.

And we are of opinion that the decision of the Arizona supreme court in this case is not supported by the language it quotes from § 31 or by any other part of the Act.[2] The paragraph containing this language defines criminal offenses and prescribes punishments

[1] The petition indicates: Federal land banks hold mortgages amounting to approximately $1,120,000,000. Joint stock land banks hold mortgages amounting approximately to $500,000,000. Under the Emergency Farm Mortgage Act of May 12, 1933, Federal land banks are authorized immediately to expand their activities to the extent of $2,000,000,000 in additional farm mortgage financing operations. Mortgages taken under that Act will contain stipulations for attorney's fees for foreclosures.

[2] "Other than the usual salary or director's fee paid to any officer, director, or employee of a national farm loan association, a Federal land bank, or a joint stock land bank, and other than a reasonable fee paid by such association or bank to any officer, director, attorney, or employee for services rendered, no officer, director, attorney, or employee of an association or bank organized under this Act shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank. No land bank or national farm loan association organized under this Act shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized. . . . Any person violating any provision of this paragraph shall be punished by a fine of not exceeding $5,000 or by imprisonment not exceeding one year, or both." 12 U. S. C., § 983.

The first sentence holds officers, directors and employees to their usual salaries and directors' fees, and limits each of them, and as well every attorney for a bank, to "a reasonable fee . . . for services rendered". The second sentence contains the provision relied on. Its sole purpose is to limit banks to the charges, fees, etc., that are specifically authorized. Then, after restricting disclosure of names of borrowers, the paragraph makes violations of its provisions punishable by fine or imprisonment or both. Other than the counsel fee in question, the judgment below does not exclude any expense of foreclosure that is permitted by Arizona law. But plainly the compensation of attorneys engaged to foreclose a mortgage is as necessary as the payment of charges for advertisement, the service of process or the sale of the property. The items last mentioned are generally, if not indeed everywhere, chargeable to defaulting mortgagors. There is nothing in the Act to suggest purpose to denounce the one and permit the others. Moreover, the quoted clause is in harmony with the restrictions put upon loans by § 12, Code, § 771, and is undoubtedly intended to emphasize and strictly to enforce limitations set by § 13, Code, § 781 (9), upon fees for appraisal and examination of title, legal fees, recording charges and the like that are included in the preliminary costs of negotiating and carrying the mortgage loans. Undoubtedly Congress intended that state laws are to govern in respect of counsel fees for foreclosure of mortgages given under the Act.

But what is said above is not to be taken to approve the collection of a substantial attorney's fee for foreclosure in every case where stipulations such as the one before us are valid under state law. Uncontested foreclosures generally follow established routine and undoubtedly many of them may be made, without much if any cost to the banks, by their regularly employed salaried lawyers. In any such case the employment of another attorney or the exaction of any substantial charge for legal services cannot be justified as reasonable. In all cases—whether foreclosure is obtained by default or after contest—the mortgagor's promise to pay the mortgagee a reasonable attorney's fee is to be construed having regard to the purpose of Congress to enable farmers, by means of mortgages on their lands, to obtain loans at low cost.

Reversed.